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CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 27th December, 2023

No. 13/2/59-HII(2)-2023/18796.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference **No. 97/2020 dated 05.09.2023** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between:

SUNITA RANI W/O SH. RAJ KUMAR R/O H. NO. 5641, MALOYA COLONY, UT
CHANDIGARH (Workman)

AND

1. CHANDIGARH COLLEGE OF ENGINEERING & TECHNOLOGY, SECTOR 26, CHANDIGARH THROUGH ITS PRINCIPAL & ORS.
2. PRINCIPAL, CHANDIGARH COLLEGE OF ENGINEERING & TECHNOLOGY, SECTOR 26, CHANDIGARH.
3. DIRECTORATE OF TECHNICAL EDUCATION, CHANDIGARH ADMINISTRATION, SECTOR 12, CHANDIGARH THROUGH ITS DIRECTOR.
4. M/S JAIN ASSOCIATES, #123/2, VILLAGE BADHERI, SECTOR 41-D, CHANDIGARH THROUGH ITS CONTRACTOR MR. ANIL JAIN. (Management)

AWARD

1. Sunita Rani, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the workman joined the services of the management i.e. Chandigarh College of Engineering & Technology (Diploma Wing), Sector 26 Chandigarh on 18.03.2016 as Peon, as an outsource employee, engaged through M/s Secure Guard Security & Manpower Services. When the workman joined, M/s Secure Guard Security & Manpower Services was the authorized contractor whereas at the time of termination of services of the workman M/s Jain Associates was the authorized contractor for outsource employees of the management No.1. The workman was covered under the Employees Provident Fund Scheme from the year 2018. The member ID of workman is PBCHD00212330000011625 under EPF. The wages of the workman were paid by cheque after making all the legal deductions including EPF. However, the new contractor i.e. M/s Jain Associates has not covered its

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employees under ESI on the pretext of issuing new registration number to all the outsource employees. Thereafter, during the course of her employment the workman besides her regular duties was also put on special duties on different occasions vide office order dated 17.02.2017, 06.06.2017 and 12.09.2017. Since, the joining of the duty under the managements, the workman has been working to the entire satisfaction of the managements. In this regard an Appreciation Certificate dated 15.11.2017 was also issued. The management of the above-mentioned college was organizing annual function of the college on 21.09.2018 and in that connection the workman was assigned the job of cleaning the entire premises around the library as she was deputed to work in the library, CCET, Diploma Wing at that point of time. On 20.09.2018 at about 4 P.M., while cleaning the walls of the library and its surrounding areas, the workman was attacked by swarm of bees and was injured badly due to the biting of the bees on her face and shoulder. The fact of bee-bite was known to all the colleagues working in Diploma Wing Library Department. Having bitten by honey-bees, soon the health condition of the workman deteriorated. The Librarian Ms Sadhana Bhardwaj, under whom the workman was currently working, observed her such health condition and as such asked the workman to leave for her home to take rest & treatment and further assured that she would bring the fact to notice of the Principal. But, the applicant being dutiful, despite swelling and increased body temperature did not take leave and continue performing her duties knowing that there was annual function on the next day i.e. 21.09.2018. On 21.09.2018, the applicant due to severe pain and high body temperature, due to bee-biting on the previous day, could not attend duties in the Annual Function in the college. The applicant, therefore, informed Ms. Sadhana Bhardwaj, the Librarian through telephone call about her bad health and as such her inability to attend to her duties till her health improves. On 21.09.2018, the husband of the applicant took her to Government Civil Dispensary, Sector 11 Chandigarh for treatment. The Doctor gave treatment for bee-bite and prescribed medicines and further advised two days rest. After taking medical rest, as advised by the Doctor, and improvement of health conditions, the workman reached the management's institution on 24.09.2018 to join her duty. But to her utter surprise and dismay, the workman was not allowed to join her duty and was verbally informed that her services have been terminated. The workman shocked by the sudden and harsh decision of termination of her services by the management that too without any of her fault and without any notice, tried to approach the Principal but the workman was not allowed to meet the Principal even. Frustrated by the act & conduct of the management, the workman daily used to visit the office of the Principal with the hope that she might get justice from the Head of the Institution. After lot of requests and prayers, the workman could meet the Principal and apprised the Principal of the fact that she could not attend to her duties as she was not well due to bee biting on 20.09.2018 while she was performing her duty in the management's institution. The workman also informed the Principal that Ms. Sadhana Bhardwaj, the Librarian was fully aware of the incident of bee biting and her health conditions and further Ms. Sadhana was informed on 21.09.2018 about her health conditions and her inability to attend to her duties. But, the Principal did not appreciate genuine inability of the workman to attend to her duties on medical ground. Thereafter, the workman approached the services provider i.e the outsourcing agency M/s Jain Associates and stated the incident on which the service provider assured her for looking in to the matter and asked her to come next day. When the workman visited the college the next day she was refused work by M/s Jain Associates and she was informed that her services were no more required. Refusal to work amounts to retrenchment. The workman was attending the job regularly and worked for 240 days during the period of 12 calendar months preceding the date of her termination i.e. 24.09.2018 and fulfils the condition mentioned in Section 25-F of ID Act. There was no compliance of Section 25-F of the ID Act on the part of the managements. There was breach of the provisions of said section of the ID Act by not giving one month's prior notice or notice pay in lieu thereof and the compensation equivalent to wages at the time of the termination. Hence, the termination is bad in law and not maintainable on this ground also. Thereafter, the workman served a demand notice to the managements and also approached the Assistant Labour Commissioner-Cum-Conciliation Officer on 03.10.2018 for conciliation proceedings. The conciliation proceedings started w.e.f. 17.10.2018 and continued till 07.01.2019 but could not be successful. During the conciliation proceedings management No. 4, Mr. Anil Jain of M/s Jain Associates provided a copy of letter dated 10.10.2018, written to him by management No. 2, the Principal, whereby Mr. Anil Jain was requested to replace the workman immediately. The Assistant Labour Commissioner issued a letter dated 23.10.2019 directing the workman to further approach the appropriate forum for adjudication of the dispute. Due to illegal termination by the management, the workman not only suffered financial loss but also suffered mental shock due to which she became prey to depression. The termination is illegal, arbitrary and in contravention of provisions of the ID Act and also in violation of the

principles of natural justice as no charge sheet was issued to the workman and neither any regular enquiry was conducted for alleged absenteeism by the workman. At the time of termination of the services of the workman neither the post held by her is abolished nor the work of the said post has receded nor any such or similar situation has arisen, therefore the action of terminating the services of the workman is illegal and unfair labour practice under Section 25-T of the ID Act. The claimant is a 'workman' and management is an 'industry' as laid down in the ID Act. Since termination, the workman is not gainfully employed anywhere. She is facing financial hardship due to termination of services as her daughter is being treated for depression from PGI Chandigarh and her son is studying from IIT Rurkee and her husband does not have regular source of income, therefore she has to financially support her family. The workman was working at Chandigarh College of Engineering & Technology, U.T. Chandigarh, therefore, this Tribunal has got the jurisdiction to adjudicate the present claim. No such or similar petition arising out of the subject matter of the present claim statement has ever been filed or decided between the parties in any Tribunal/Court of Law. Prayer is made that the workman may be reinstated along with back wages and compensation to the tune of ₹ 50,000/-. Further, the order of termination may be set aside being illegal, arbitrary, whimsical and against the principle of natural justice, in the interest of justice, equality and fair play.

3. On notice, management No. 1 to 3 appeared through its authorized representative and contested the claim of the workman by filing written statement on 19.07.2021, wherein preliminary objections are raised on the ground that the present claim petition is not maintainable against the answering management. The workman has not approached this Court with clean hands and concealed the material facts from this Court. The answering management had executed an agreement with M/s Secure Guard Security & Manpower Services for providing manpower on outsource basis and an agreement was executed for the period from 01.10.2015 to 30.09.2016. The workman was engaged by the outsource agency namely M/s Secure Guard Security & Manpower Services and has no concern whatsoever with the management-college. There is a condition in the agreement that there is no relationship of employer & employee between the workman and answering management. The said condition is reproduced below :—

"4.10 Relationship between the employer and staff:- The person deployed by the contractor for the work shall be his employees for all intents and purposes and in no case, there shall be any relationship of employer and employee between the said persons and the institute, either implicitly or explicitly"

Further contract was awarded to M/s Jain Associates through Directorate of Technical Education, U.T. Chandigarh w.e.f. 21.11.2017 to 20.11.2018 on the same terms and conditions. On 18.03.2016 workman was joined as Peon through outsource agencies M/s Secure Guard Security & Manpower Services and was required to do the work in the Library of the college. On 25.09.2018 the Librarian has informed to the Principal that workman i.e. Mrs. Sunita Rani was absent from her duty since 21.09.2018 without any intimation. The answering management had written a letter to the contractor M/s Jain Associates to replace the workman as she had not rejoined her duties. There was no relationship of employer & employee between the workman and answering management and no appointment letter was ever issued by the answering management to the workman and the services of the workman was termination by the contractor i.e. management No. 4.

4. On merits, it is admitted that the workman joined the services of the management i.e. Chandigarh College of Engineering & Technology (Diploma Wing), Sector 26 Chandigarh on 18.03.2016 as Peon, as an outsource employee, engaged through M/s Secure Guard Security & Manpower Services. When the workman joined M/s Secure Guard Security & Manpower Services was the contractor whereas at the time of termination of services of the workman M/s Jain Associates was the contractor for outsource employees of the management No.1. It is pleaded that no special duty was assigned to the workman and she used to perform her duties as usual. The workman used to remain absent from the duties. No appreciation certificate was ever issued to the workman. However, only a Credential Certificate has been issued to the workman. The workman was absent from duty w.e.f. 21.09.2018 without any intimation. The workman did not re-join her duty till 25.09.2018, thereafter, the Librarian had intimated to the Principal regarding the absenteeism of workman vide letter dated 25.09.2018. The workman has put false and baseless allegations on the Principal, as no such incident has occurred. Contents of paras 3, 16, 17, 18, 21, 23 & 24 replied being matter of record. Further similar stand is taken as taken in the preliminary objections. Rest of the averments of claim statement are denied being wrong except paras 6, 9 & 13 which are denied for want of knowledge. Prayer is made that the claim statement may be dismissed.

5. On notice, management No. 4 appeared through its authorized representative and contested the claim of the workman by filing written statement on 13.09.2022, wherein preliminary objections are raised on the ground that at the outset, the answering management deny each and every arguments and allegations made therein by the workman save and except to what is specifically admitted hereinafter. The workman has served the incomplete plaint/ statement of claim as the annexures /documents mentioned in the plaint are not served by the claimant hence the respondents reserves their right to amend their written statement after receiving the complete plaint with the permission of this Court. The instant statement of claim is false, frivolous and devoid of any cause of action, thus should be dismissed in-limine. The answering management is one of the leading reputed firm in India. Management No. 4 is well known service provider in the manpower service industry. The workman is guilty of mis-representations, mis-statements, concoctions and concealment of material facts. The workman has deliberately failed and neglected to disclose true and correct facts and the plaint contains mis-statements, false to the knowledge of the workman. The workman has not approached this Court with clean hands and the claim has been filed as an afterthought to commit mischief in order to make the answering management succumb to the illegitimate demands of the workman otherwise legally unsustainable. The claim has been filed only to harass, coerce, blackmail and pressurize the managements. The claim is without any cause and is liable to be rejected on this ground as well. The claim filed by the workman is without any cause of action and liable to be dismissed. No cause of action exists in favor of the workman and against the managements. The claim is entirely vexatious and is an attempt by the workman to harass the managements. The plaint deserves to be dismissed on this ground alone. The present statement of claim filed by the workman is abuse of the process of law and same is filed with intention to extort money from the innocent persons. The workman cannot take the benefit of her own wrong therefore the claim is liable to be dismissed as the same is file in collusion.

6. On merits, it is stated that the fact that the workman joined the services of the management i.e. Chandigarh College of Engineering & Technology (Diploma Wing), Sector 26 Chandigarh on 18.03.2016 as Peon, is a matter of record. The answering management is not aware about the agency which was service provider to management No. 1 before the work was allotted to them. The workman was covered in ESI and also as per record she was also subscriber to ESI and her IP No. was 1713366019. The answering management is not aware whether the work & conduct of the workman was up to mark or not. Management No.1 being the authority to take work from the staff deployed with it through the answering management, can better explain about the work and conduct of the workman. Appreciation certificate issued is not by management No. 4. The answering management is not aware of the fact, if any function was being going to be held in the college on 21.09.2018. The answering management is also not aware what duties were assigned to the workman by management No. 1. The episode of honey bees, who were stated to attacked on the workman, is not in the knowledge of answering management. It is admitted that the workman served a demand notice to the managements and also approached the Assistant Labour Commissioner-Cum-Conciliation Officer on 03.10.2018 for conciliation proceedings. During the conciliation proceedings management No. 4, Mr. Anil Jain of M/s Jain Associates provided a copy of letter dated 10.10.2018, written to him by management No. 2, the Principal, whereby Mr. Anil Jain was requested to replace the workman immediately. The answering management acted on the instructions of management No. 2 being the principal employer. Rest of the averments of claim statement are denied as wrong except paras 7, 8, 10 to 12, 14, 21 & 23 which are denied for want of knowledge. Prayer is made that the claim of the workman may be dismissed.

7. The workman filed replication to written statement of management No.1 to 3, wherein the contents of written statement are denied as wrong except the admitted facts of the claim and the averments of the statement of claim are reiterated.

8. On 29.05.2023 none appeared on behalf of management No.1 to 3 and management No.1 to 3 were proceeded against *ex-parte*.

9. From the pleadings of the parties, following issues were framed vide order dated 29.05.2023:—

1. Whether the termination of services of the workman is illegal ? OPW
2. If issue No.1 is proved in affirmative, whether the workman is entitled to reinstatement with continuity of service, full back wages and all other consequential benefits along with interest, as prayed for ? OPW

3. Whether there is relationship of employer & employee between management No.1 to 3 and workman ? OPW
4. Whether the workman has no cause of action ? OPM (management No.4)
5. Relief.

10. On 18.08.2023, the case was at the stage of awaiting appearance of the workman and evidence of the workman. On 24.01.2023 workman neither appeared in person nor through her representative. Thus, in the interest of justice vide order dated 24.01.2023, notice to the workman and her Representative was ordered to be issued for 28.02.2023. On 28.02.2023, notice issued to workman was received back executed through her personal service and notice issued to her Representative Dr. Nareshanand was received back with the report of Process-Server that Dr.Nareshanand has reported that he has no concern with the case of Ms. Sunita Rani. However, on 28.02.2023 workman appeared in person in pursuance of notice and it was made clear to her that for her future absence without intimation, no separate notice will be issued to her. Her statement to this effect was recorded separately. Again on 13.07.2023 workman failed to appear. In the interest of justice, case was adjourned from 13.07.2023 to 18.08.2023 for awaiting appearance of the workman and on 18.08.2023 the case was repeated calls since morning up to 03:30 P.M. Workman neither appeared in person nor anybody else appeared on her behalf. Under the circumstances, workman was proceeded against *ex-parte* on 18.08.2023.

11. On 05.09.2023 Learned Representative for management No. 4 made the statement that since the workman has not led any evidence and has been proceeded against *ex-parte* so management No.4 also does not want to lead any evidence and closed the same.

12. I have heard the arguments of Learned Representative for management No.4 and perused the judicial file. My issue-wise finding are as below:-

Issue No. 1 to 3 :

13. All these issues are taken up together being interconnected and in order to avoid repetition of discussion. Onus to prove all these issues is on the workman.

14. Under these issues the workman did not adduce any oral or documentary evidence rather preferred to be proceeded against *ex-parte*. The workman has failed to prove her case.

15. Accordingly, all these issues are decided against the workman and in favour of the managements.

Issue No. 4 :

16. Onus to prove this issue is on the management No.4. During course of arguments this issue has not been pressed by management No.4.

17. Accordingly, issue No.4 is decided against the management No.4 and in favour of the workman.

Rrlief :

18. In the view of foregoing finding on issue No.1 to 3 above, the present industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

(Sd.),

(JAGDEEP KAUR VIRK)
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No.PB0152.

Dated : 05.09.2023.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 27th December, 2023

No. 13/2/67-HII(2)-2023/18798.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **91/2020 dated 18.09.2023** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between:

DEEPAK KUMAR AGED 36 YEARS S/O SUNIL DUTT, R/O HOUSE NO.5095, SECTOR 38 WEST, CHANDIGARH. (Workman)

AND

1. CLEAR SECURED SERVICES PVT. LTD., HEAD OFFICE AT RUNWAL & OMKAR SQUARE, UNIT NO.201-D, 2ND FLOOR, SITUATED NEAR SION, F/NORTH WARD, SION, CHUNABHATTI ROAD MUMBAI - 400022 THROUGH ITS M.D. VIMAL DUBEY.
2. CLEAR SECURED SERVICES PVT. LTD., ZONAL OFFICE AT 240, 1ST FLOOR, SHAHPUR JAT, NEW DELHI - 110049 THROUGH ITS ZONAL HEAD SARTAJ.
3. CLEAR SECURED SERVICES PVT. LTD., BRANCH OFFICE AT KESHO RAM COMPLEX, SCO 703/3, NEAR SUKH GAS AGENCY, SECTOR 45, BURAIL CHANDIGARH THROUGH ITS BRANCH HEAD B.M. MANDEEP. (Management)

AWARD

1. Deepak Kumar, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the workman was working as Supervisor in Clear Secured Service Pvt. Ltd., having branch office at Kesho Ram Complex, SCO 703/3, Near Sukh Gas Agency, Sector 45, Burail, Chandigarh w.e.f. 13.03.2013 having Employment ID 2705 and continuously, uninterrupted worked up to 15.03.2019, approximately 6 years of service, with the management. The workman was being paid salary @ ₹15,500/- per month, which were below the minimum wage notified by the Chandigarh Administration. All of sudden without assigning any reason and notice on 16.03.2019 the management did not allow the workman to work and services of the workman were terminated by management illegally, arbitrary and against the provisions of the ID Act. The applicant approached the Assistant Labour Commissioner regarding his unlawful termination but no fruitful purpose was served. Refusal of work by the management amounts to termination under Section 2(oo) of the ID Act. Termination of the workman by the management is also violative to the provision of Section 25-F of the ID Act. The management has not complied with the provision of Section 25-G of the ID Act. The management has retained junior workers. The workman raised an industrial dispute vide demand notice dated 12.10.2019 under Section 2-A of the ID Act. The Assistant Labour Commissioner started conciliation proceedings but the same was closed as no amicable settlement was arrived at. Termination of the service of workman is illegal, arbitrary, unjust, unwarranted and is liable to be set aside. The workman had worked for more than 240 days within 12 months receiving the date of termination, therefore, the services of the workman cannot be terminated without compliance of above said provisions of the ID Act. The management has not paid provident fund, gratuity, bonus, earned charges, leave with wages, salary due for the period of demonetization, ₹ 100/- deducted per month from salary for any urgency, National holidays, salary paid below the minimum rate fixed by Chandigarh Administration, 15 days salary for the month March 2019 along with notice period salary and other allowances applicable to the workman. Till date the workman is unemployed and looking for work and is ready to join the job of management. Prayer is made that claim of the workman may be allowed with cost and the management may be directed to reinstate the workman in service with full wages.

3. Notice issued to management No.1 to 3 for dated 15.12.2020 was received back un-executed with the report that the office of the management does not exist at given address. Thereafter, fresh notice was ordered to be issued to the management on filing of correct address. Notice issued under registered cover to management No.1 was not received back undelivered despite elapse of mandatory period of 30 days. Management No.1 was presumed to have been served and due to non-pppearance on behalf of management No.1, vide order dated 03.12.2021 management No.1 was proceeded against *ex-parte*.

4. Thereafter, case remained pending for filing of correct address of management No.2 & 3. Despite availing repeated opportunities including last opportunities the workman failed to file correct address of management No.2 & 3.

5. On dated 04.01.2023 none appeared on behalf of the workman despite repeated calls since morning up to 4:00 P.M. *Vide* order dated 04.01.2023, in the interest of justice, notice to workman and Learned Representative for the workman was ordered to be issued for 31.03.2023. Notice issued to the workman for dated 31.03.2023 was received back executed through his personal service. Simultaneously, notice issued to Shri Himanshu Sharma, Representative for the workman for dated 31.03.2023 was received back executed through Shri B. K. Sharma - Advocate, countersigned by Shri Himanshu Sharma -Advocate. On 31.03.2023 the workman appeared in pursuance of notice. He was made aware that in case of his future absence without intimation, no separate notice will be issued to him. The workman intended to pursue his case. His statement to this effect was recorded separately on 31.03.2023 and the case was adjourned for issuing notice to management No.2 and 3 on filing of correct address within 7 working days subject to last opportunity for 03.03.2023. On 03.03.2023 fresh memo of appearance on behalf of the workman was filed by Shri Aman Sharma -Advocate. The correct address of management No.2 & 3 was not filed. On request of Learned Representative for the workman, notice to management No.2 & 3 was ordered to be issued for 29.03.2023 on filing of correct address within 7 working days subject to last opportunity as per previous order and further direction was issued to file authority letter on behalf of the workman on date fixed. Again on 29.03.2023 neither workman appeared in person nor anyone else appeared on his behalf. Notice to management No. 2 & 3 was not issued for want of correct address. Again, in the interest of justice, notice to the workman was ordered to be issued for 09.05.2023. Notice issued to workman for 09.05.2023 was received back executed through his personal service. On 09.05.2023 workman appeared in person and got recorded his statement which is reproduced as below :—

"Stated that, I have appeared in pursuance of notice issued by this court. On last date I did not appear before this court as I was out of station. I have been informed by this court for my future absence without intimation no separate notice will be issued by this court."

6. On request of workman notice to management No. 2 & 3 was ordered to be issued on filing of correct address subject to last opportunity for 02.06.2023. On subsequent dates 02.06.2023, 19.07.2023 and 16.08.2023 notice to management No.2 & 3 was not issued for want of correct address. On 16.08.2023 again workman neither appeared in person nor through his Representative nor anyone else appeared on his behalf. In the interest of justice, the case was adjourned to 18.09.2023 for awaiting appearance of the workman.

7. Today i.e. 18.09.2023, workman neither appeared in person nor through his Representative nor anybody else appeared on his behalf despite repeated calls since morning. Under the circumstances, the workman was proceeded against *ex-parte*. Consequently, the present industrial dispute reference is *ex-parte* declined for non-appearance of the workman and for want of proceedings. Appropriate Government be informed. File be consigned to the record room.

(Sd.),

(JAGDEEP KAUR VIRK)
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

Dated : 18.09.2023.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 27th December, 2023

No. 13/2/66-HII(2)-2023/187800.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **121/2021 dated 11.10.2023** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between:

SHIV KUMAR, HOUSE NO.239, KACHI COLONY, VILLAGE DHANAS, CHANDIGARH
(Workman)

AND

CHANDIGARH CHILD & WOMEN DEVELOPMENT CORPORATION LIMITED,
CHANDIGARH (A CHANDIGARH ADMINISTRATION UNDERTAKING), REGD.
OFFICE: TOWN HALL BUILDING, 3RD FLOOR, SECTOR 17-C, CHANDIGARH
THROUGH ITS MANAGING DIRECTOR. (Management)

AWARD

1. Shiv Kumar, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the claimant-workman was appointed and deployed as a Computer Clerk by the respondent-management vide letter No. 333 dated 09.02.2010 on contractual basis in the establishment of respondent-management (Observation-cum-Special Home, Sector 25, Chandigarh), which is a Unit of respondent Corporation. The claimant-workman rendered his continuous services for 10 years in different units of respondent and his last working place was Snehalya for Boys, Maloya, Chandigarh where he was discharging his duties as Computer Clerk along with miscellaneous work. The claimant-workman has rendered continuous services to the respondent from the period 13.02.2010 to 26.06.2020 as his contract has been renewed from time to time with notional break of 01 or 02 days. The last drawn wages of the claimant-workman was ₹ 21,975/- per month as per DC Rate. The claimant-workman was performing the duty of Computer Clerk, therefore, falls within the definition of 'workman' under Section 2(s) of the ID Act. The claimant-workman is covered under the Employees Provident Fund Scheme (UAN No.100417706083 of EPF Account). The claimant-workman continuously and without any interruption had worked for 10 years and performed his duties to the entire satisfaction of the respondent-management and never gave any opportunity of complaint to the respondent-management except a show cause notice bearing reference No.6303 dated 04.02.2020 issued to the claimant-workman for proceeding on 1st half day leave on 05.12.2019 alleging that claimant-workman did not get the leave sanctioned from the Competent Authority, to which the claimant-workman has filed reply. Thereafter, the contract of the claimant-workman was renewed for 03 months by the respondent-management. However, due to spread of COVID-19 pandemic, the area where the claimant-workman resides was declared Containment Zone by the Chandigarh Administration, therefore, the claimant-workman was not able to attend his office duties which the claimant-workman had informed telephonically and through e-mails to the concerned Authority of the respondent-management. Thereafter, the claimant-workman's contract was renewed only for a month i.e. from 27.05.2020 to 26.06.2020. The claimant-workman requested for extension of his contract vide letter dated 23.07.2020 to the respondent-management, however, his request was not considered and his services were terminated without any reason. The claimant-workman was intimated by the management vide letter bearing Reference No.2414 dated 22.10.2020 that a committee was constituted vide respondent-management's office letter No.1343 dated

31.07.2020 to enquire about the allegations leveled against Ms. Neeru Puri, Superintendent, with reference to the complaint filed by the claimant-workman. In the said letter it was further mentioned that as per the report of the committee, nothing objectionable in reference to personal remarks by the Superintendent with regard to the claimant-workman's personal life was found by the committee except that the behaviour of the Superintendent is rude and dis-respectful to other staff members, therefore, the office had issued the warning letter to Ms. Neeru Puri, Superintendent to be careful in future vide office letter No.1834 dated 14.09.2020. In the said letter, it was further mentioned that since the claimant-workman had been given several opportunities to improve his performance but as he failed to do so, as per the recommendations of the Evaluation Committee, his services were terminated without any notice, accordingly the claimant-workman was not offered fresh contract after 26.06.2020 due to unsatisfactory performance. The Superintendent of the Children Home, Snehalaya (Boys), Ms. NeeruPuri, who is a new appointee, had personal disliking towards the claimant-workman because he had once protested against the misbehavior of the Superintendent against one of the employees of the aforesaid home and due to the same reason, the Superintendent had verbally abused the claimant-workman several times with malicious intentions. However, the management of the respondent esteemed Corporation has over-looked this fact and instead terminated the services of the claimant-workman who had served the respondent-Corporation with honesty and sincerity for last 10 years. The said action of the respondent-management is illegal and comes under the preview of the unfair trade practice under Section 2(ra) of the ID Act. The claimant-workman was refused work by the respondent-management vide letter Reference No.1330 dated 29.07.2020. The services of the claimant-workman were terminated without issuing any notice, which amounts to retrenchment under Section 2(oo) of the ID Act. No charge-sheet was issued to the workman and no regular inquiry was conducted. The claimant-workman was not paid any notice pay or retrenchment compensation. The refusal of work resulting in termination by the respondent-management is illegal, arbitrary and in contravention to the provisions of Sections 25-F, 25-G and 25-H of the ID Act and also in violation of the principle of natural justice which makes the termination void *ab-initio*. The claimant-workman has continuously worked for 240 days during the period of 12 calendar months preceding the date of his termination and fulfills the condition mentioned in Section 25(F) of the I.D. Act. The claimant-workman served upon the respondent-management demand notice dated 09.11.2020, however, no amicable settlement could be made possible within stipulated period for conciliation of dispute and the conciliation proceedings were failed. At the time of termination of the services of the claimant-workman, neither the post held by him is abolished nor the work of the said post has receded nor any such or similar situation has arisen. The claimant-workman is not gainfully employed from the date of his termination of services till date and facing financial hardship as he is the sole bread earner of his family and has to make both the ends meet to support his family. Prayer is made that workman may be reinstated with continuity of service along with full back wages.

3. On notice, the respondent-management contested the claim statement by filing the written statement on dated 06.04.2022 wherein preliminary objections are raised and submissions are made that the present case is not maintainable as the respondent-management does not fall under the definition of 'industry' as defined in Section 2(j) of the ID Act. Besides, the workman has not approached the Court with clean hands and suppressed the material facts and record. The workman was given contractual appointment for joining as Clerk in Observation-cum-Special Home, Sector 25, Chandigarh for 06 months vide letter No. 333 dated 09.02.2010 and he joined on 09.02.2010. The contract was further extended from 11.08.2010 to 10.02.2011, from 13.02.2011 to 12.08.2011, 15.08.2011 to 14.02.2012, 17.02.2012 to 16.08.2012, 24.08.2012 to 23.11.2012, 26.11.2012 to 30.06.2013, 02.07.2013 to 01.07.2014, 03.07.2014 to 02.07.2015, 06.07.2015 to 05.07.2016, 08.07.2016 to 07.01.2017, 11.01.2017 to 10.07.2017, 13.07.2017 to 12.01.2018, 16.01.2018 to 15.07.2018, 18.07.2018 to 17.09.2018, 20.09.2018 to 19.03.2019, 23.03.2019 to 22.03.2020, 24.03.2020 to 23.05.2020 and lastly from 27.05.2020 to 26.06.2020. The service of the workman was governed by the contract executed between the workman and the respondent-management. Therefore, the services of the workman were governed by the terms & conditions of the contract and both the parties cannot go beyond the terms & conditions of the contract.

It was one of the conditions that in case the work & conduct of the workman is found unsatisfactory at any time during the contract period, the contract shall be terminated without giving any notice and without assigning any reason. During inspection on 23.02.2019, it was found that there was mis-match in the quantity of Rice and Rajma as per the stock register and also the lunch was not cooked as per prescribed menu. Therefore, an explanation was called from the workman due to above said laxity in his service. Reply was submitted by the workman which was found not satisfactory, thereafter, admonish was given to him. The services of the workman were again found unsatisfactory and during inspection it was found that he has not updated the stock register despite issuance of previous warning. He was also on 1st half day leave on 05.12.2019 without getting the leave sanctioned from the Competent Authority. Moreover, he used to come late in the office and also thereafter a show cause notice dated 04.02.2020 was served upon the workman and reply submitted by the workman to the show cause notice was found not satisfactory. Thereafter, a committee was constituted and it was recommendation of the committee not to issue the fresh contract after 23.05.2020, as the workman was irresponsible towards his duties and his services were found unsatisfactory. After the recommendation of the committee, the respondent-management had taken sympathetic view and the contract of the workman was extended for one month i.e. 27.05.2020 to 26.06.2020 meaning thereby he had been informed that his contract would not be extended after 26.06.2020.

4. Further on merits, similar stand is taken as taken in the preliminary objections/submissions. It is replied as a matter of record that after the recommendations of the committee, the respondent-management has taken sympathetic view and the contract was extended for one month i.e. 27.05.2020 to 26.06.2020 and that on the complaint of the workman a committee was constituted and on the recommendations of the committee action was taken against Ms. Neeru Puri, Superintendent and when the contract of the workman was expired on 26.06.2020 the workman submitted a request for extension of contract which was considered by the management and rejected vide letter dated 22.10.2020. It is admitted as correct that the workman raised a demand notice dated 09.11.2020 in which the conciliation proceedings were conducted before the Assistant Labour Commissioner-cum-Conciliation Officer, U.T, Chandigarh and the conciliation proceedings failed. Rest of the averments of the claim statement are denied as wrong and prayer is made that the claim statement may be dismissed in the interest of justice, equity and fair play.

5. Workman filed rejoinder, wherein the contents of the written statement except admitted facts of the claim statement are denied as wrong and averments of claim statement are reiterated.

6. From the pleadings of parties following issues were framed vide order dated 16.09.2022 :-

1. Whether the termination of the workman is retrenchment under Section 2(oo) of the ID Act ? OPW
2. If issue No.1 is proved in affirmative, whether the workman is entitled for reinstatement with continuity of service, full back wages and all consequential benefits, as prayed for ? OPW
3. Whether the management does not fall under the definition of 'industry' as defined under Section 2(j) of the ID Act ? OPM
4. Whether the workman has not approached the Court with clean hands and has suppressed the material facts ? OPM
5. Relief.

7. In evidence, workman Shiv Kumar examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with original letter reference No.1330 dated 29.07.2020 addressed from Company Secretary, CCWDC to Shiv Kumar vide Exhibit 'W1'. On 06.06.2023 workman closed his evidence in affirmative. In cross-examination of AW1, the management had put documents Exhibit 'M1' to Exhibit 'M6' to the witness.

Exhibit 'M1' is copy of letter dated 06.03.2019 issued by the management calling explanation of workman for mismatch in the quantity of Rice and Rajma as per the stock register and physical stock.

Exhibit 'M2' is copy of warning issued by the management to the workman vide letter bearing Reference No.6703 dated 22.03.2019.

Exhibit 'M3' is copy of show cause notice bearing Reference No.6303 dated 04.02.2020 issued by Company Secretary for Managing Director, CCWDC Ltd. to workman Shiv Kumar.

Exhibit 'M4' is the letter bearing Reference No.2414 dated 22.10.2020 issued by Company Secretary for Managing Director, CCWDC Ltd. to workman Shiv Kumar relating to the subject of request for extension of contract.

Exhibit 'M5' is the copy of the letter bearing Reference No.4800 dated 30.12.2016 issued Company Secretary for Managing Director, CCWDC Ltd. to workman Shiv Kumar whereby the contract was offered for the period of 06 months w.e.f. 11.01.2017 to 10.07.2017.

Exhibit 'M6' is the copy of the letter bearing Reference No.743 dated 11.06.2020 issued Company Secretary for Managing Director, CCWDC Ltd. to workman Shiv Kumar whereby the contract was offered for the period of 01 months w.e.f. 27.05.2020 to 26.06.2020.

On 06.06.2023 workman closed his evidence in affirmative.

8. On the other hand, management examined MW1 Rajni Gupta, Company Secretary, CCWDC Ltd, Chandigarh who tendered her affidavit Exhibit 'MW1/A' along with attested copies of documents i.e. Exhibit 'MW1/1' to MW1/25'.

Exhibit 'MW1/1' is contractual appointment for the post of Clerk in Juvenile Home, Sector 25, Chandigarh dated 09.02.2010.

Exhibit 'M1/2' is contractual appointment for the post of Clerk in Juvenile Home, Sector 25, Chandigarh dated 16.08.2010.

Exhibit 'MW1/3' is contractual appointment for the post of Clerk in Juvenile Home, Sector 25, Chandigarh dated 10.02.2011.

Exhibit 'MW1/4' is contract as Clerk in Juvenile Home, Sector 25, Chandigarh dated 16.08.2011

'Exhibit 'MW1/5' is contract as Clerk in Juvenile Home, Sector 25, Chandigarh dated 21.02.2012.

Exhibit 'MW1/6' is contract as Clerk in Juvenile Home, Sector 25, Chandigarh dated 24.08.2012.

Exhibit 'MW1/7' is contract as Clerk in Juvenile Home, Sector 25, Chandigarh dated 30.11.2012.

Exhibit 'MW1/8' is contract as Clerk in Juvenile Home, Sector 25, Chandigarh dated 20.01.2013.

Exhibit 'MW1/9' is contract as Clerk in Juvenile Home, Sector 25, Chandigarh dated 02.07.2013

Exhibit 'MW1/10' is contract as Clerk in Juvenile Home, Sector 25, Chandigarh dated 30.06.2014.

Exhibit 'MW1/11' is contract as Clerk in Juvenile Home, Sector 25, Chandigarh dated 08.07.2015.

Exhibit 'MW1/12' is contract as Clerk in Juvenile Home, Sector 25, Chandigarh dated 06.07.2016.

Exhibit 'MW1/13' is contract as Clerk in Juvenile Home, Sector 25, Chandigarh dated 30.12.2016.

Exhibit 'MW1/14' is contract as Clerk in Juvenile Home, Sector 25, Chandigarh dated 12.07.2017.

Exhibit 'MW1/15' is contract as Clerk in Juvenile Home, Sector 25, Chandigarh dated 16.01.2018.

Exhibit 'MW1/16' is contract as Clerk in Juvenile Home, Sector 25, Chandigarh dated 16.07.2018.

Exhibit 'MW1/17' is contract as Clerk in Juvenile Home, Sector 25, Chandigarh dated 20.09.2018.

Exhibit 'MW1/18' is contract as Clerk in Juvenile Home, Sector 25, Chandigarh dated 22.03.2019.

Exhibit 'MW1/19' is contract as Clerk in Juvenile Home, Sector 25, Chandigarh dated 18.03.2020.

Exhibit 'MW1/20' is minutes of the evaluation committee constituted for evaluating the work of contractual Employee of Children Home Snehalaya (Boys) Maloya, held on 08.05.2020.

Exhibit 'M1/21' is letter bearing Reference No.2414 dated 22.10.2020 regarding request for extension of contract.

Exhibit 'MW1/22' is letter bearing Reference No.6386 dated 06.03.2019 whereby explanation of workman Shiv Kumar was called.

Exhibit 'MW1/23' is warning letter bearing Reference No.6703 dated 22.03.2019 issued to Shiv Kumar.

Exhibit 'MW1/24' is show cause notice dated 04.02.2020 issued to the workman.

Exhibit 'MW1/25' is contract as Computer clerk in Observation-cum-Special Home, Sector 25, Chandigarh dated 11.06.2020.

On 05.09.2023 Learned Law Officer closed oral evidence on behalf of the management. On 09.10.2023, Learned Law Officer closed documentary evidence on behalf of the management.

9. I have heard arguments of Learned Representative for the workman and Learned Law Officer for the management and perused the judicial file. My issue-wise findings are as below:-

Issue No. 1 & 2 :

10. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion.

11. Onus to prove both these issues is on the workman.

12. Under these issues the workman Shiv Kumar examined himself as his own witness as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto which are not reproduced here for the sake of brevity. AW1 has supported his oral version with document Exhibit 'W1'.

13. On the other hand management has examined MW1 Rajni Gupta - Company Secretary, Chandigarh Child & Women Corporation Limited (CCWCL), Chandigarh who tendered her affidavit Exhibit 'MW1/A' wherein she has deposed the entire material contents of the written statement and supported her oral version with documents Exhibit 'MW1/1' to Exhibit 'MW1/25'.

14. From the oral as well as the documentary evidence led by the parties, it comes out that the workman-claimant Shiv Kumar was initially appointed as a Computer Clerk on contractual basis by the Department of CCWCL, Chandigarh / management for six months on the basis of letter bearing No.333 dated 09.02.2010 / Exhibit 'MW1/1'. In pursuance of the said contract, the workman joined service on 09.02.2010. On expiry of the period of six months, his services were terminated and he was re-employed on similar terms & conditions on the basis of another letter bearing Reference No.2131 dated 16.08.2010 / Exhibit 'MW1/2' for the period w.e.f. 11.08.2010 to 10.02.2011 i.e. for the period of 6 months. Again on completion of the contract period, the services of the workman were terminated. Again the workman was employed on similar terms & conditions on the basis of another letter bearing Reference No.393 dated 10.02.2011 / Exhibit 'MW1/3' for the period w.e.f. 13.02.2011 to 12.08.2011 i.e. for a period of six months. The process of re-employment and termination

from service on completion of contract period continued on the basis of letter dated 16.08.2011 / Exhibit 'MW1/4' (w.e.f. 15.08.2011 to 14.02.2012), dated 21.02.2012 / Exhibit 'MW1/5' (w.e.f. 17.02.2012 to 16.08.2012), dated Nil, reference No.3921 bearing endorsement No.3922-3923 dated 24.08.2012 / Exhibit 'MW1/6' (w.e.f. 24.08.2012 to 23.11.2012), dated 30.11.2012 / Exhibit 'MW1/7' (w.e.f. 26.11.2012 to 25.05.2013), dated 28.01.2013 / Exhibit 'MW1/8' (w.e.f. 01.01.2013 to 30.06.2013), dated 02.07.2013 / Exhibit 'MW1/9' (w.e.f. 02.07.2013 to 01.07.2014), dated 30.06.2014 / Exhibit 'MW1/10' (w.e.f. 03.07.2014 to 02.07.2015), dated 08.07.2015 / Exhibit 'MW1/11' (w.e.f. 06.07.2015 to 05.07.2016), dated 06.07.2016 / Exhibit 'MW1/12' (w.e.f. 08.07.2016 to 07.01.2017), dated 30.12.2016 / Exhibit 'MW1/13' (w.e.f. 11.01.2017 to 10.07.2017), dated 12.07.2017 / Exhibit 'MW1/14' (w.e.f. 13.07.2017 to 12.01.2018), dated 16.01.2018 / Exhibit 'MW1/15' (w.e.f. 16.01.2018 to 15.07.2018), dated 16.07.2018 / Exhibit 'MW1/16' (w.e.f. 18.07.2018 to 17.09.2018), dated 20.09.2018 / Exhibit 'MW1/17' (w.e.f. 20.09.2018 to 19.03.2019), dated 22.03.2019 / Exhibit 'MW1/18' (w.e.f. 23.03.2019 to 22.03.2020), dated 18.03.2020 / Exhibit 'MW1/19' (w.e.f. 24.03.2020 to 23.05.2020) till the last contract dated 11.06.2020 / Exhibit 'MW1/25' (w.e.f. 27.05.2020 to 26.06.2020). The services of the workman were finally discontinued after the completion of last contract period. The last contract period was up to 26.06.2020. It is pertinent to mention here that contract letter dated 28.01.2013 / Exhibit 'MW1/8' was in suppression of the earlier contract letter dated 30.11.2012 / Exhibit 'MW1/7'. The workman has alleged that his contract was not further continued by the management on the ground that his performance is unsatisfactory. Learned Representative for the workman argued that non-renewal of contract on the ground of un-satisfactory performance amounts to retrenchment within the meaning of Section 2(oo) of the ID Act. In the present case, the services of the workman are retrenched without compliance of the mandatory requirement of Section 25-F of the ID Act. The management did not issue any prior notice to the workman nor paid any notice pay in lieu of notice period. The workman during tenure of his service is neither charge sheeted nor domestic inquiry was ever held against the workman on account of un-satisfactory performance. To support her arguments Learned Representative for the workman referred cross-examination of MW1 Rajni Gupta wherein she has admitted the suggestion as correct that the alleged termination of the workman is on account of his un-satisfactory performance. Learned Representative for the workman further referred cross-examination of MW1 wherein she has admitted as correct that the workman was not issued any charge sheet or unsatisfactory performance during entire tenure of his service. On the other hand, Learned Law Officer for the management argued that the appointment of the workman was for a fixed period under various contracts with intermittent breaks. On every occasion the workman was appointed for six months except the last contract which was for a period of 1 month only. The contract of the workman after the completion of last contract period was not extended, therefore, it is not a case of retrenchment in view of Section 2(oo)(bb) of the ID Act. The workman was aware that his work was only for a specific period and his job was not of permanent nature. The appointment of the workman was purely contractual in nature. The workman has no legal right to the post. It is further argued by Learned Law Officer that as per the terms & conditions of the contract, the contractual employment shall automatically deemed to be terminated after the expiry of the contractual period and if at any time, the work & conduct of the contractual employee is found unsatisfactory, contract shall be terminated without giving any notice and assigning any reason. To support his arguments Learned Law Officer referred Clause 1, 7 and 8 of contract dated 09.02.2010 / Exhibit 'MW1/1', which are reproduced as below :-

- "1. The appointment is purely on contract basis for a period of six months.
7. If at any time, your work and conduct is found unsatisfactory, the contract shall be terminated without giving any notice and assigning any reason.
8. The contractual appointment shall automatically deemed to be terminated after the expiry of contractual period of six months which would commence from the date of your joining or it can be terminated on one month notice on either side or on payment of an amount equal to one month remuneration."

Learned Law Officer argued that the remaining contracts also incorporates the similar terms & conditions as contained in Exhibit 'MW1/1'. Learned Law Officer by making reference to the above said terms & conditions of the contract argued that the last contract dated 11.06.2020 was one month's prior notice for termination of the services of the workman.

15. The management has offered various contractual appointments as Clerk in Juvenile Home, Sector 25, Chandigarh to the workman w.e.f. 09.02.2010 up to 26.06.2020 with notional breaks of 1 to 3 days. The workman was not in a position to avoid such breaks. When the management allows the workman to continue in service with notional breaks, after the workman put in 240 days of service in 12 calendar months, it amounts to unfair labour practice if service of such workman is terminated by the management without compliance of Section 25-F of the ID Act. In the present case, the services of the workman are not terminated on the sole ground of completion of contract period. As proved from Exhibit 'MW1/20' i.e. minutes of the evaluation committee constituted for evaluating the work of contractual employee of Children Home, Snehalaya (Boys), Maloya held on 08.05.2020, the committee recommended that if Shiv Kumar fails to upgrade the stock registers daily, then his services may be terminated without giving any notice. His contract was going to expire on 23.05.2020. The committee recommended not to issue fresh contract after 23.05.2020. From Exhibit 'MW1/21' i.e. letter dated 22.10.2020 issued from the Managing Director of the management to workman Shiv Kumar, it is further proved that on request moved by the workman for extension of contract, the management replied to him that as per the recommendation of the evaluation committee, his services were terminated without any notice and accordingly, he was not offered fresh contract after 26.06.2020 due to un-satisfactory performance. In view of the contents of letter dated 22.10.2020 / Exhibit 'MW1/21', the plea taken by the Law Officer in cross-examination of AW1 that last contract dated 11.06.2020 was one month's prior notice for termination of his services stands falsified because as per the management the services of the workman were terminated without any notice. Moreover, as per the contents of Exhibit 'MW1/21' the services of the workman are not terminated only on account of completion of last contract period but also on the ground of unsatisfactory performance of the workman. It is not case of the management that the job which was being performed by the workman is no more required. In order to attract Section 2(oo)(bb) of the ID Act it is required for the employer to show that workman had been employed for a specified work and the job which was being performed by the employee is no more required. In the present case, MW1 Rajni Gupta in her cross-examination stated that the post of Computer Clerk on which the workman was posted was not abolished. No regular employee has been recruited on the said post of Computer Clerk. MW1 in her re-examination stated that the workman was deployed under the project. The project is still continuing. She has no idea if any workman either contractual or regular is re-employed at the place of the workman. The aforesaid version of MW1 that she has no idea if any contractual or regular worker is re-employed at the place of the workman is evasive reply showing that MW1 has tried to shrug off her responsibility. MW1 in her cross-examination admitted as correct that alleged termination of the workman is on account of his un-satisfactory performance. MW1 further admitted as correct that the workman was not issued any charge sheet for unsatisfactory performance during entire tenure of his service. The volunteer statement of MW1 that no charge sheet is required to be issued to any contractual worker for his unsatisfactory performance is not acceptable being contrary to the provisions of the ID Act. Therefore, Section 2(oo)(bb) of the ID Act is not attracted.

16. In view of the reasons recorded above, the non-renewal of the contract of the workman due to his unsatisfactory performance, without issuing any charge sheet or without holding any inquiry is illegal. Moreover, before terminating the services of the workman, the management has failed to comply with the mandatory conditions as laid down in Section 25-F of the ID Act. As per the provisions of the ID Act, no workman employed in any industry who has been in continuous service for not less than one year under an employer can be retrenched by that employer until the conditions enumerated in Clause (a) & (b) of Section 25-F of the ID Act are satisfied. In terms of Clause (a), the employer is required to give to the workman one month's notice in writing indicating the reasons for retrenchment, compensation equivalent to 15 days average pay for every completed year of continuous service or any part thereof in excess of six months. In the present case, the

management has neither issued the prior notice nor paid notice pay in lieu of the notice period in contravention to condition No.8 incorporated in the contract Exhibit 'MW1/1'. It is own plea of the management that subsequent contract incorporates the similar terms & conditions. Furthermore, AW1 Shiv Kumar in his cross-examination has denied the suggestion as wrong that the last contract dated 11.06.2020 was one month's prior notice for termination of his services. The suggestion put a witness which is denied by him being wrong or incorrect is no evidence unless proved otherwise. Thus, the management has failed to prove issuance of any prior notice or payment of notice pay in lieu of notice period or payment of retrenchment compensation to the workman. Consequently, the termination of services of the workman being without complying with the mandate of Section 25-F of the ID Act is illegal and hereby set aside. The workman is held entitled for reinstatement with continuity of service and 50% back wages along with consequential benefits.

17. Accordingly, both these issues are decided in favour of the workman and against the management.

Issue No. 3 :

18. Onus to prove this issue is on the management.

19. Learned Law Officer for the management argued that the management does not fall within the definition of 'industry' as defined under Section 2(j) of the ID Act. On the other hand, Learned Representative for the workman by making reference to the judgment of Hon'ble Supreme Court in case titled as **Bangalore Water Supply & Sewerage Board Versus A. Rajappa & Others** reported in **1978 Lab. I.C. 467** argued that the management department falls within the definition of 'industry' as per the observations of the Hon'ble Supreme Court. To my opinion, the judgment **1978 Lab. I.C. 467** referred supra is applicable to the facts of the present case to an extent and accordingly the management department is an 'industry' as defined under Section 2(j) of the ID Act.

20. Accordingly, this issue is decided against the management and in favour of the workman.

Issue No. 4 :

21. Onus to prove this issue is on the management.

22. Though the management has raised preliminary objection that the workman has not approached the Court with clean hands and had suppressed the material facts, but failed to disclose and explain as to how the workman has approached with unclean hands and which material facts are concealed by him.

23. Accordingly, this issue is decided against the management and in favour of the workman.

Relief :

24. In the light of findings on the issues above, this industrial dispute is allowed. The workman is entitled for reinstatement with continuity of service and 50% back wages along with consequential benefits. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till its actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.),

(JAGDEEP KAUR VIRK)
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

Dated : 11.10.2023.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 27th December, 2023

No. 13/2/50-HII(2)-2023/18802.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **42/2021 dated 06.10.2023** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

THENKI, AGED 29 YEARS, S/O SHRI RAKESH KUMAR, R/O VPO TEERA, TEHSIL KHARAR, DISTT. SAS NAGAR, MOHALI, PUNJAB-160014 (Workman)

AND

THE REGISTRAR, PANJAB UNIVERSITY (*INCORRECTLY SPELLED AS PUNJAB UNIVERSITY IN THE CLAIM STATEMENT*), SECTOR 14, CHANDIGARH (Management)

AWARD

1. Thenki, workman has filed statement of claim under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*), wherein it is averred that the workman was appointed in terms of the procedure prescribed for appointment under the Rules and joined as daily wage basis Helper on 20.04.2011 for 89 days on DC rates and thereafter, from time to time the services of the workman were extended and continued till 31.07.2013 by the management. The workman has put his continuous regular service of more than 2 years and more than 240 days in a calendar with the management. The services of the workman were terminated by the management on 31.07.2013 without any notice pay, charge sheet, inquiry and without any retrenchment compensation. At the time of retrenchment, the workman was drawing wages of ₹ 7,997/- per month. During the course of employment the workman was allotted Provident Fund number and his provident fund was also deducted. After the illegal termination of workman from his services, the management has appointed and joined new hands without giving offer of re-employment and preference to the workman. The juniors to the workman are still in service with the management. Work & conduct of the workman during the course of his employment remained very satisfactory and no inquiry, charge sheet was ever issued or initiated during his employment or after illegal termination of services. The management has not complied with the provisions of Sections 25-F, 25-G, 25-H & 25-N of ID Act and is running unfair labour practices. At the time of retrenchment, the management had assured to the workman he will be recalled whenever there is any vacancy or job requirement. But even after approach of the workman, he was refused to rejoin. The management instead of rejoining the workman joined fresh Helpers on daily basis. Since then the workman is unemployed and has no source of livelihood. The workman waited sufficiently as per the assurance of the management. At last the workman issued demand notice dated 21.03.2020 demanding re-instatement with continuity of service along with full back wages but the management did not accede to the request of the workman. In pursuance of the demand notice the Conciliation Officer, Chandigarh initiated conciliation proceedings but the same stand failed vide order dated 18.02.2021. Prayer is made that the workman may be reinstated into service with continuity and full back wages.

2. On notice the management contested the claim statement by filing written statement on 16.07.2021 wherein preliminary objections are raised on the grounds that the Panjab University being an 'educational institution' does not come under the definition of 'industry', hence the same is not covered under the purview of the ID Act. Therefore, Sections 25-F, 25-G, 25-H & 25-N of the ID Act are not applicable to the Panjab University. As such, the present claim is not maintainable and liable to be rejected.

3. Further in para-wise reply, it is stated that the workman was appointed as Helper on daily wage basis on 21.04.2011 for a period of 89 days initially on DC rates and thereafter his services were extended from time to time for 89 days with one day break on completion of every term of appointment. It is incorrect that the workman has put continuous service of more than 240 days in a calendar year. It is further stated that the workman was relieved on 31.07.2013 on completion of period of extension given to him, vide office orders dated 30.07.2013. Due to the appointment of Regular Peons through advertisement No.14/2008, the services of the workman were dispensed with. It is further stated that the management has not committed any irregularity by passing the relieving orders of the workman since the assignment as daily wage Helper on contractual basis automatically ends on the expiry of contract period or completion of the seasonal examination work, whichever is earlier, without any requirement of notice as already mentioned in the advertisement circulated vide No.5767-5917/Estt. dated 17.03.2010. The advertisement has clearly stated that the daily wagers are not entitled to retrenchment compensation or to any claim for continuity of service or re-employment. It is replied as a matter of record that the workman was drawing ₹ 7,997/- per month wages at the time of his retrenchment and that the workman was allotted provident fund number and during course of employment his provident fund was deducted. It is further stated that as per Government norms it is compulsory to deduct PF of every employee whether he / she is regular or contractual. Hence, PF number allotted to every employee. The services of the workman were never terminated illegally by the management. It is denied as wrong that management appointed new hands without giving re-employment and preference to the workman. The workman was called by the management telephonically according to merit for appointment as daily wage Helper on 24.04.2014 he was not available on the said telephone number (being wrong number) and also the workman has not updated his number in the office records of the management so that the management could call him again. The fact that work & conduct of the workman during the course of his employment remained satisfactory and no inquiry, charge sheet was ever issued or initiated is a matter of record. The fact that the workman raised demand notice dated 21.03.2020 and conciliation proceedings failed as per order dated 18.02.2021 of Assistant Labour Commissioner-cum-Conciliation Officer, Chandigarh is replied being matter of record. Rest of the averments of claim statement are denied as wrong except para 11 & 12, which are denied for want of knowledge and prayer is made that the claim may be dismissed being devoid of merits.

4. Replication not filed. From the pleadings of the parties following issues were framed vide order dated 08.09.2021 :-

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether management does not fall under the definition of 'industry' ? OPM
3. Relief.

5. In evidence, the workman Harpreet Singh examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with copies of documents Exhibit 'AW1/1' and Exhibit 'AW1/2' and Mark 'A' to Mark 'C'.

Exhibit 'AW1/1' is demand notice dated 21.03.2020 issued by the workman to the Registrar, Panjab University, Sector 14, Chandigarh under Section 2-A of the ID Act.

Exhibit 'AW1/2' is the proceedings / failure report bearing Memo No.435 dated 18.02.2021 of Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh whereby on account of failure of the conciliation proceedings, the workman was advised to approach the appropriate forum for the adjudication of dispute.

Mark 'A' is publication dated 17.03.2010 for the recruitment to the post of Helper (also put to AW1 as Exhibit 'M1' by the management).

Mark 'B' is office order dated 30.07.2013 for relieving the daily wage Helpers, issued by Panjab University, Chandigarh.

Mark 'C' is detail instructions dated 26.12.2014 issued for recruitment of daily wage Helpers on DC rates.

6. The workman examined AW2 Surinder Singh - Clerk, Office of Panjab University, Sector 14, Chandigarh, who brought into evidence attested copies documents Exhibit 'AW2/1' to Exhibit 'AW2/7'.

Exhibit 'AW2/1' is list of appointed daily wage Helper in the Panjab University vide Adv. No. 5767-5917/Estt. dated 17.03.2011.

Exhibit 'AW2/2' is list of relieved daily wage Helpers appointed in the year 2011.

Exhibit 'AW2/3' is list of daily wage helpers engaged in the year 2012.

Exhibit 'AW2/4' is list of daily wage helpers appointed vide Adv. No.130-330/Estt. dated 26.12.2014.

Exhibit 'AW2/5' is office order No. 10712-10905/Estt. dated 29.08.2018.

Exhibit 'AW2/6' is extension order of workman from 2013 onwards.

Exhibit 'AW2/7' is list of MTS workers hired through outsourcing agency i.e. M/s Bedi & Bedi Associates in the year 2016-2017.

On 25.04.2023 workman closed his evidence in affirmative.

7. On the other hand, the management examined MW1 Surinder Singh - Clerk, Panjab University, Chandigarh, who tendered his affidavit Exhibit 'MW1/A' along with certified copies of documents Exhibit 'R1' to Exhibit 'R6'

Exhibit 'R1' is brief note on notice served by Harpreet Singh, Thenki vide Memo No. 4528, 4530 dated 16.12.2020.

Exhibit 'R2' is office order No.16862-79 dated 30.07.2013.

Exhibit 'R3' is appointment letter of Harpreet Singh as a fresh daily wage-Helper on contract basis vide 8809-8811/Estt. dated 17.04.2014.

Exhibit 'R4' is list of candidates telephonically called for joining / re-appointment.

Exhibit 'R5' is corrigendum to advertisement No.06/2014 published in newspaper along with statement of candidates appeared in physical fitness test held on 06.05.2015 for the post of Helpers on daily wage basis (Advt. No.6/2014) and attendance sheet of candidates called for physical fitness test and interview for the post of Helpers on daily wage basis held on 06.05.2015.

Learned Representative for the management closed evidence on behalf of the management on 04.10.2023.

8. I have heard arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below :-

Issue No. 1 :

9 Onus to prove this issue is on the workman.

10. Under this issue the workman Thenki examined himself as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for the sake of brevity. AW1 supported his oral version with documents Exhibit 'AW1/1', Exhibit 'AW1/2' and Mark 'A' to Mark 'C'.

11. For corroboration the workman examined AW2 Surinder Singh - Clerk, Office of Panjab University, Chandigarh, who brought the summoned record in original and proved into evidence attested copies of documents vide Exhibit 'AW2/1' to Exhibit 'AW2/7'.

12. On the other hand, the management examined Surinder Singh - Clerk, Establishment Branch - II, Non-teaching, Panjab University, Chandigarh as MW1, who tendered his affidavit Exhibit 'MW1/A' and deposed that the workman was appointed as Helper on daily wage basis on 21.04.2011 for a period of 89 days initially on DC rates and thereafter his services were extended from time to time for 89 days with one day break on completion of every term of appointment. The workman was relieved on 31.07.2013 on completion of period of extension given to him, vide office order dated 30.07.2013. The advertisements issued vide circular No.5767-5917/Estt. dated 17.03.2010 wherein clearly stated that the daily wagers are not entitled to retrenchment compensation or any claim for continuity of service or re-employment. The workman was called by the management telephonically according to merit for appointment as daily wage Helper on 24.04.2014 but he was not available on said telephone number as available in the office record of management. The workman also did not apply against the next advertisement No.6 of 2014 for the post of Helper. MW1 supported his oral version with documents Exhibit 'R1' to Exhibit 'R5'.

13. From the oral as well as documentary evidence led by the parties, it comes out that the management has placed on record the appointment letter dated 17.04.2014 Exhibit 'R3' which relates to Harpreet Singh S/o Dharam Singh. However, there is no dispute between the parties with regard to the facts that initially the management of Panjab University, Chandigarh appointed the workman as Helper on daily wages on 20.04.2011 for a period of 89 days on DC rates and the workman joined on 21.04.2011. In this regard MW1 in his cross-examination voluntarily stated that the workman joined on 21.04.2011. Further, there is no dispute between the parties with regard to the fact that thereafter the services of the workman were extended from time to time for 89 days with 1 day notional break on completion of every term of employment. Thereafter, due to appointment of regular Peons through advertisement No.14/2008, the services of the workman were dispensed with 31.07.2013.

14. The grievance of the workman is that while dispensing with his services in the year 2013, the workman was given assurance that he will be recalled whenever there is any vacancy or emergent requirement for seasonal examination work, but the management subsequently engaged daily wagers in the year 2014 as well as in the year 2015. Fresh advertisement No.6/2014 was issued for appointment of daily wage-Helper on contractual basis but the workman was neither recalled to join service nor any preference in appointment was given to the workman. To support his arguments Learned Representative for the workman referred cross-examination of MW1 wherein he has stated that no preference was given to any previous contractual workman. Learned Representative for the workman referred cross-examination of MW1 wherein he has stated that as per the record in the year 2015 no separate letter was issued to the workman calling him to rejoin the duties. To support his argument Learned Representative for the workman referred the judgments **1998(1) RSJ 703 (P&H) titled as Bhikku Ram Versus The Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak** and **2001(1) SCT 205 (P&H) tilted as The Faridabad Central Co-Op. Bank Ltd., Faridabad Versus The Presiding Officer, Labour Court (II), Faridabad.**

15. On the other hand, Learned Representative for the management contended that the management has not violated any provisions of the ID Act and has not acted in arbitrary manner, as alleged. The advertisement No.6/2014 was applicable to all the applicants including those whose services were dispensed with vide office order / Exhibit 'R2' and in the present case the workman did not apply for the post. The management made efforts to communicate the workman on his mobile number but the same was responding switched off. Moreover, no selection was made in the year 2015. The daily wagers who were appointed in the year 2014 joined in the year 2015. To support his contention Learned Representative for the management referred cross-examination of MW1 wherein he has stated that in the year 2014 the workman was telephonically called to rejoin, prior to joining of the workman engaged in pursuance of advertisement of the year 2014 but the contact number of the

workman was responding switched off. MW1 in his cross-examination categorically stated that no workmen were engaged in the year 2015. The workmen engaged in the year 2014 joined in the year 2015. AW1 Thenki in his cross-examination denied the suggestion as wrong that on 24.07.2014 he was called on his mobile contract No.9878488643 for joining in pursuance to continuation of circular dated 17.03.2010. AW1 further denied the suggestion that he applied and was called for physical test vide advertisement dated 26.12.2014 and the said physical test was held on 05-06 May 2015 and he did not appear in the same. AW1 voluntarily stated that he did not apply against advertisement dated 26.12.2014 and he did not receive any intimation for appearing in physical test. To my opinion, since it is undeniable fact that the advertisement for the post bearing advertisement No.6/2014 was published in newspaper The Tribune and Dainik Bhaskar Edition dated 26.12.2014 and thereafter corrigendum of Advertisement No.6/2014 vide Exhibit 'R6' was also published in the newspapers the Tribune (English Edition) thus it is sufficient notice to the general public including the workman. Despite proper intimation through newspaper publication, the workman did not apply in pursuance of Advt. No.6/2014. MW1 in his cross-examination categorically stated that the terms & conditions of the advertisement were applicable equally to all the applicants. No preference was to be given to any previous contractual workman. This version of MW1 is in context to applicability of terms & conditions of Advt. No.6/2014. MW1 further stated that the workman did not apply under the aforesaid advertisement. As far as the legality of Advt. No.6/2014 is concerned, the workman has not challenged the same before any competent court of jurisdiction or forum. Furthermore, the workman has not disputed his relieving w.e.f. 31.07.2013 on the basis of office order dated 30.07.2013 due to appointment of regular Peons through advertisement No.14/2008. The workman is not entitled to the post for which he has not applied under rules. Consequently, provision of Section 25-F of the ID Act is not attracted. The law laid down in the judgments referred by Learned Representative for the workman reported in **1998(1) RSJ 703 (P&H) and 2001(1) SCT 205 (P&H) (supra)** is well recognized by this Court but the ratio of the ruling is not applicable to the facts of the present case.

16. Accordingly, this issue is decided against the workman and in favour of the management.

Issue No. 2 :

17. Learned Representative for the management argued that the Panjab University is an educational institution and does not fall within the definition of 'industry' as defined in Section 2(j) of the ID Act. To my opinion the aforesaid argument advanced by Learned Representative for the management is devoid of merits. In the judgment of Hon'ble Supreme Court titled as **Bangalore Water Supply & Sewerage Board, etc. Versus R. Rajappa & Others** reported in **AIR 1978 SC 548**, it has been held that educational institutions are an 'industry', accordance with Section 2(j) of the ID Act.

18. Accordingly, this issue is decided against the management and in favour of the workman.

Relief :

19. In the view of foregoing findings on the issue No. 1 above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

(Sd.),

(JAGDEEP KAUR VIRK)

PRESIDING OFFICER,

Industrial Tribunal & Labour Court,

Union Territory Chandigarh.

UID No. PB0152.

Dated : 06.10.2023.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 27th December, 2023

No. 13/2/65-HII(2)-2023/18804.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **8/2019 dated 17.10.2023** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

TARUN SAINI S/O SH. RAMESH SAINI, R/O HOUSE NO.2537, SECTOR 38-C, CHANDIGARH (Workman)

AND

1. MANAGING DIRECTOR/C.E.O., BHARTI AIRTEL LTD., OFFICE OF ARAVALI CRESCENT 1, NELSON MANDELA ROAD, VASANT KUNJ PHASE II, NEW DELHI - 110070, INDIA THROUGH ITS SH. GOPAL VITHAL.
2. CHIEF EXECUTIVE OFFICER, BHARTI AIRTEL, PLOT NO.21, RAJIV GANDHI, TECHNOLOGY PARK, CHANDIGARH THROUGH ITS SH. MANU SOOD.
3. RUPANE SHARMA (HR HEAD) BHARTI AIRTEL LIMITED, PLOT NO.21, RAJIB GANDHI TECHNOLOGY PARK, CHANDIGARH.(Management)

AWARD

1. Tarun Saini, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the workman was engaged as First Activation Officer on permanent basis on 20.10.2014 in the office of management No.2 & 3, but no appointment letter was given. However, the signatures of the workman were obtained on blank and printed papers at the time of interview by the management. The workman was appointed on salary of ₹ 14,134/- which was increased from time to time. The last paid salary of the workman was ₹ 17,136/-per month. The workman's employee ID was B0087348. The workman completed service approximately of 4 years and 6 months. His services were terminated on 05.04.2019 by the management against the provisions of the ID Act. The work & conduct of the workman was excellent. On 30.03.2019, it was Saturday which was holiday for the employees of Head Office of Bharti Airtel Ltd. but on that day Mr. Pankaj Mahajan (Senior Manager) has called the workman on phone at about 1:42 P.M. and called him to the Head Office of Bharti Airtel Ltd. Thereafter, the workman went there and sit in the conference room. He was surprised that Mr. Jagmohan Chhabra was also there. Mr. Pankaj Mahajan told the workman to give resignation today itself from the post of FTA Spoke Manager / First Activation Officer. Thereafter, Mr. Jagmohan Chhabra, DGM gave blank paper and pen to the workman. When the workman refused to sign the resignation letter, then Mr. Jagmohan Chhabra threatened the workman that he will not give resignation then this will not be good for him and his job. Further Jagmohan Chhabra made a video call on phone to Sukeerat Gill (HR). Sukeerat Gill told the workman that if he will not resign then he will be issued termination notice on Monday i.e. 01.04.2019. No reason was given to the workman as to why resignation is asked for. Aggrieved from the aforesaid act & conduct, the workman moved a complaint vide email on 30.03.2019 to Gopal Vithal (CEO), Manu Sood (CEO), Ajay Puri (CEO) and The Ombudsperson against Pankaj Mahajan (Senior Manager) and Jagmohan Chhabra (DGM). On 03.04.2019 about 11:43 the workman received email from management No.3 (Rupane Sharma, HR Head) asking the workman to meet him and Kulasekar Venkatesan (GM) in person on or before 05.04.2019 with regard to the complaint moved by the workman against Pankaj Mahajan and Jagmohan Chhabra. On 05.04.2019 when the workman reached the office of HR Head i.e. management No.3 (Rupane Sharma), he saw Kulasekar Venkatesan was also sitting

there but neither Pankaj Mahajan nor Jagmohan Chabbra were present there. The management No.3 (Rupane Sharma) told the workman that he is the well wisher of the workman, therefore, he is advising him to give resignation failing which the services of the workman will be terminated. If the workman will give resignation then Mr. Rupane Sharma will adjust the workman through the contractor. Hearing the above said words of Rupane Sharma, the workman was shocked and asked for the reasons for his termination as workman has excellent record and there was not even a single complaint against him. The workman asked management No.3 Mr. Rupean Sharma that the workman has been called here to settle the grievance of his complaint but no talks were done with regard to his complaint. Neither Pankaj Mahajan nor Jagmohan Chabbra were called. No inquiry was conducted that as to how Pankaj Mahajan and Jagmohan Chabbra called the workman on Saturday i.e. 30.03.2019 which was holiday and threatened him to given resignation. When the workman came out from the office of Mr. Rupane Sharma, and within minutes received a mail stating therein that the company has no option but to exercise termination clause on workman's contract letter. After that in the evening the workman received termination letter through email on the same day i.e. 05.04.2019 at about 6:21 P.M. by Sukeerat Gill. Thereafter, one registered post termination letter dated 05.04.2019 was also received by the workman. Despite repeated requests the workman was not taken on duty. The workman sent demand notice dated 08.04.2019 to the managements. The Assistant Labour Commissioner, U.T. Chandigarh issued notices to the managements on 15.04.2019 and directed them to appear before him on 16.07.2019 at 2:30 P.M. The workman has been working sincerely, honestly and up to the satisfaction of the superior. The workman had also been working on holidays i.e. 15 August, 26 January, Dushera and 2nd October etc. There was no a single complaint or any misconduct till date against the workman. The workman moved a complaint for redressal of the same but workman was called by Rupane Sharma where as Pankaj Mahajan and Jagmohan Chabbra were not called by Rupane Sharma. This itself shows that there was some kind of hank-panky between these two officers. The workman had completed 240 days in each year. The above mentioned termination is against the settled provision of law, against the provisions of the ID Act and in violation of Section 25-F, 25-G and 25-H of the ID Act. The workman has been doing his duties regularly, efficiently and has excellent record of service. The services of the workman were terminated without assigning any reason, without serving show cause notice and without conducting any inquiry or without giving any chance of hearing. Such type of termination in the eyes of law is totally illegal, unlawful, against the principles of natural justice and equity and against the provisions of Section 25-F, 25-G & 25-H of the ID Act. Some junior persons namely Jeevan, Shashi Kant, Nitin Arora, Sarvan, Harash Kumar, Sumit, Reshi, Hitesh Gulati, Suresh Kumar and Anil Sharma, to the workman have been retained in service. Thus, principle of 'last come first go' has not been followed while terminating the services of the workman. Since the date of appointment i.e. 20.10.2014, the workman continuously performed his duties as FTA Spoke Manager, as employee with the management. At the time of termination of services of the workman, no inquiry was ever held, no explanation was told and no charge sheet was issued against the workman. The action of the employer management is malafide, arbitrary, discriminatory, injustice and against the principle of natural justice and ID Act. The employee provident fund deducted from the wages and pending wages of the workman have not been given. The management can misuse the plane and printed papers over which signatures of the workman were taken at the time of interview. Prayer is made that the workman may be held entitled for reinstatement with continuity of service along with full backwages and interest and consequential benefits.

3. On notice, management contested the claim statement by filing written reply on 26.11.2019 wherein preliminary objections are raised on the ground that the claim statement is liable to be dismissed as there is an important objection which is jurisdictional in nature and goes to the root of the matter. The present industrial dispute is suffering from serious infirmity of non-espousal prior to raising any demand purporting to be under Section 2(k), regardless of the nomenclature which the claimant has chosen to accord, it is incumbent upon the claimant to show competency for espousal. The workman is guilty of misusing this Authority meant for genuine and bonafide aggrieved person. It shall encourage this kind of frivolous claim. The services of the workman were terminated on 05.04.2019 as per Clause 4.1 of the appointment letter. The claimant is guilty of misusing this Authority by filing false and frivolous claims for adjudication with malafide intention to harass the management by dragging it to the present unnecessary and unwarranted litigation so that he may extract maximum possible money for the management. The workman has already filed a claim before the Labour Commissioner, which is pending for disposal.

4. Further on merits, it is stated that the services of the workman have been terminated as per Clause 4.1 of the appointment letter. The termination is totally legal. The salary of the workman is a matter of record. The allegations levelled in the claim statement are baseless and concocted to mislead this Court. The workman is guilty not only of suppression *veri* and also of suppression *falsi*. Further similar stand is taken as taken in the preliminary objection. Rest of the averments of claim statement are denied as wrong and prayer is made that the claim statement may be dismissed being not maintainable.

5. The workman filed replication wherein contents of the written statement except admitted facts, are denied as wrong and averments of claim statement are reiterated.

6. From the pleadings of the parties, following issues were framed vide order dated 17.12.2019 :-

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Relief.

7. In evidence, the workman Tarun Saini examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with copies of documents Exhibit 'W1' to 'W18'

Exhibit 'W1' is probation confirmation e-letter dated 15.05.2015.

Exhibit 'W2' is call history details.

Exhibit 'W3' is complaint dated 31.03.2019 submitted by workman to the Ombudsperson, Bharti Enterprises Ltd. against Pankaj Mahajan (Senior Manager) and Jagmohan Chhabra (DGM).

Exhibit 'W4' is complaint dated 30.03.2019 submitted by workman to Gopal Vithal (CEO), Ajay Puri (CEO) and Manu Sood (CEO) against Pankaj Mahajan (Senior Manager) and Jagmohan Chhabra (DGM).

Exhibit 'W5' is letter of termination dated 05.04.2019.

Exhibit 'W6' is demand notice dated 08.04.2019 raised by Tarun Saini to the Managing Director / CEO, Chief Executive Officer and HR Head of Bharti Airtel Ltd. under Section 2-A of the ID Act.

Exhibit 'W7' is failure report bearing Memo number and dated Nil, endorsement No.1546 dated 15.04.2019 of Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh.

Exhibit 'W8' is hard copy of email dated 03.04.2019 from Rupane Sharma to Tarun Saini.

Exhibit 'W9' is hard copy of email dated 05.04.2019 from Sukeerat Gill to Tarun Saini.

Exhibit 'W10' is leave history.

Exhibit 'W11' is hard copy of email dated 25.01.2017 from Manpreet Lamba to Davinder Singh and others.

Exhibit 'W12' is certificate dated 31.03.2019 issued by authorised signatory of management.

Exhibit 'W13' is annual compensation review dated 01.06.2016 relating to Tarun Saini, Officer, Customer Experience.

Exhibit 'W14' is total rewards statement / annual compensation review dated 01.06.2017 for performance year FY 2016-17 relating to Tarun Saini.

Exhibit 'W15' is total rewards statement / annual compensation review dated 01.06.2018 for performance year FY 2017-18 relating to Tarun Saini.

Exhibit 'W16' is recovery letter dated 18.10.2019 issued from Bharti Airtel Ltd. to Tarun Saini.

Exhibit 'W17' is reply dated 12.10.2019 to recovery letter dated 03.10.2019 from Tarun Saini to HR Activ-Exit Management Team Bharti Airtel Ltd.

Exhibit 'W18' is reply dated 23.10.2019 to recovery letter dated 18.10.2019 from Tarun Saini to HR Activ-Exit Management Team Bharti Airtel Ltd.

On 07.02.2023 the workman tendered into secondary evidence photocopy of appointment letter of Jeevan Kumar (date of joining 22.06.2015) vide Mark 'A' and closed his evidence in affirmative.

8. On the other hand, management examined MW1 Shri Varun Vashisht - Manager HR, M/s Bharti Airtel Ltd., who tendered his affidavit Exhibit 'MW1/A' along with copy of documents Exhibit 'M1' & Exhibit 'M1'.

Exhibit 'M1' is appointment letter dated 16.10.2014 of Tarun Saini.

Exhibit 'M2' is termination letter dated 05.04.2019.

9. During cross-examination of MW1, the workman put appointment letter dated 16.10.2014 issued to Tarun Saini by the Bharti Airtel Ltd. Vide Exhibit 'W19'.

10. The managements have availed repeated about 12 effective opportunities including last opportunities as well as undertaking dated 24.08.2023 got recorded by Learned Representative for the managements No. 1 to 3 to the effect that he undertakes to conclude entire evidence on the next date of hearing, failing which evidence of managements may be closed by order. Thereafter, again on the next date i.e. 12.09.2023 no MW was present and on request of Learned Representative for the managements, the case was adjourned to 03.10.2023 for remaining entire evidence of the managements subject to cost of ₹500/-. On 03.10.2023 neither any MW was present nor cost imposed vide order dated 12.09.2013 was paid by the managements No.1 to 3 despite being pressed by Learned Representative for the workman. Since the managements failed to conclude evidence, thus evidence of managements No.1 to 3 closed by order.

11. I have heard the arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as under :-

Issue NO. 1 :

12. Onus to prove this issue is on the workman.

13. Under this issue the workman Tarun Saini examined himself as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the contents of claim statement in toto which are not reproduced here for the sake of brevity. AW1 supported his oral version with documents Exhibit 'W1' to 'W19'.

14. On the other hand, management examined MW1 Varun Vashisht - Manager HR of M/s Bharti Airtel Ltd., who vide his affidavit Exhibit 'MW1/A' deposed the entire material contents of written statement and supported his oral version with documents Exhibit 'M1' and Exhibit 'M2'.

15. From the oral as well as documentary evidence led by the parties, it comes out that admittedly that vide appointment letter dated 16.10.2014 i.e. Exhibit 'W9' / Exhibit 'M1', workman Tarun Saini was appointed as Officer in the organisation of M/s Bharti Airtel Ltd.

16. The plea taken by the workman that at the time of interview his signatures were obtained on some plain and printed papers by the management is not acceptable because the workman is literate person, who was appointed as First Activation Officer and no man of ordinary prudence would sign any blank document or any writing without going through the contents thereof. During tenure of his service with the management, the workman never complained to the management of M/s Bharti Airtel Ltd. nor to any competent authority that his signatures are obtained on blank or printed papers by the management at the time of interview. Even in the complaint dated 31.03.2019 / Exhibit 'W3' and another complaint dated 31.03.2019 / Exhibit 'W8' no such fact has been mentioned.

17. Further, there is no dispute that since the date of appointment, the workman continuously remained in service of the management till termination of his services vide letter dated 05.04.2019 / Exhibit 'W5' / Exhibit 'M2'. Learned Representative for the workman argued that on 30.03.2019 was holiday on account of Saturday for the employees of Head Office of Bharti Airtel Ltd. but on that day Mr. Pankaj Mahajan, Senior Manager telephonically called the workman to their Head Office. There Mr. Jagmohan Chabbra - DGM was also present. The said Mr. Pankaj Mahajan and Mr. Jagmohan Chabbra forced the workman to give resignation and gave him a blank paper and pen but the workman refused to sign the resignation letter. The workman was

threatened on his refusal to sign the resignation letter. On being aggrieved from the said act, the workman moved the complaints Exhibit 'W3' & Exhibit 'W4'. Instead of taking action on the said complaint the workman was issued termination letter Exhibit 'W5' / 'M2' without assigning any reason for termination and without compliance with Section 25-F of the ID Act. On the other hand, it is argued by Learned Representative for the management that the above said allegations raised by the workman are false and without any basis. No incident dated 30.03.2019 as alleged ever took place. The termination order Exhibit 'W5' / 'M2' is legal, the same being in accordance with clause 4.1 of the appointment letter Exhibit 'W19' / 'M1'. The notice pay in lieu of notice was adjusted against the recovery notice Exhibit 'W16'. It is further argued by Learned Representative for the management that the workman did not pay the outstanding recovery amount as detailed in the recovery letter dated 18.10.2019 / Exhibit 'W16' though filed reply dated 12.10.2019 to the recover notice dated 03.10.2019 vide Exhibit 'W17' and reply dated 23.10.2019 to the recovery notice dated 18.10.2019 vide Exhibit 'W18'.

18. To my opinion, the management has failed to controvert the fact that the workman has filed complaints Exhibit 'W3' and Exhibit 'W4'. The workman vide application dated 16.04.2021 sought the production of record of certain documents including the record of the action taken on the complaints filed by the workman through email on 30.03.2019 and 31.03.2019. The management did not produce the record of action taken on the said complaints. However, with regard to non-production of the record, Shri Varun Vashisht had filed an affidavit dated 10.01.2023 wherein he has deposed that the company has already produced the record pertaining to Shri Tarun Saini and there is no record of any unaddressed grievance of Shri Tarun Saini with the company. In view of the facts & circumstances above, the management has failed to prove on record the action taken by the management on the said complaints.

19. As far as the termination letter Exhibit 'W5' / Exhibit 'M2' is concerned, since it is not in dispute that the workman has completed continuous service of 240 days in 12 calendar months preceding termination (termination w.e.f. 05.04.2019), as required under Section 25-B of the ID Act, thus before issuing the termination letter the management is bound to comply with the conditions incorporated in Section 25-F of the ID Act. For better appreciation Section 25-F of the ID Act is reproduce as below :-

"25F. Conditions precedent to retrenchment of workmen.-No workman employed in any industry who has been in continuous service for not less than one year under an employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]."

By virtue of Section 25-F(a) one month's notice must indicate the reasons for retrenchment. In the present case, in the order of termination Exhibit 'W5' / Exhibit 'M2' it is mentioned as below :-

"This is to inform you that in accordance with clause number 4.1 of your Appointment Letter, your services are hereby terminated and your services will come to an end with immediate effect and you will be paid one month's basic salary in lieu of the notice period.

You are requested to handover the property and assets i.e. laptop, id-card, as issued to you by the company for performance of your duties.

Also requested to return all the confidential information / data, in physical and electronic form etc. which were entrusted to you."

In order to know whether letter of termination Exhibit 'W5' / Exhibit 'M2' is according to terms & conditions of the appointment letter Exhibit 'W19' / Exhibit 'M1', it is further important to go through the relevant Clause 4.1 of the appointment letter, which is reproduced as below :-

"4.1 During the probation period, your services may be terminated by the Management by giving 7 days notice thereof without assigning any reasons. Similarly, you can leave the services of the company by giving 7 days notice in writing. After your confirmation; the Management may terminate your employment, by giving one month's written notice or basic salary in lieu thereof without assigning any reasons. Similarly, you can leave the services of the Company with one month's notice in writing or basic salary in lieu thereof after your confirmation."

MW1 Varun Vashisht in his cross-examination stated that it is correct that as per Clause 4.1 of the appointment letter Exhibit 'W19' after confirmation, the management may terminate the employment by giving one month's written notice or basic pay in lieu thereof. Before terminating the services of the workman the management has not issued one month's prior notice. The workman might have been paid one month's salary in lieu of notice period. He does not know if the approval of the management was obtained for issuing letter of termination dated 05.04.2019 / Exhibit 'M2'. He is not aware of the provisions of Section 25-F, 25-G & 25-H of the ID Act. He does not know if at the time of termination any compensation is paid to the workman. MW1 in his cross-examination further stated that he cannot say if the management has not followed the principle of 'first come last go' at the time of termination of the workman. From the aforesaid version of MW1, it is made out that he is not well conversant with the facts of the present case. The management has failed to bring into evidence any record to prove that the management has paid one month's notice pay in lieu of notice period to the workman. The explanation offered by the management that amount of ₹ 6,733/- towards recovery of laptop was outstanding against the workman has been adjusted against the payment of notice pay, has no justification. The management failed to bring on record any document showing entrustment of laptop to the workman. Moreover, Clause 4.1 of appointment letter Exhibit 'W19' / Exhibit 'M1' which says that the service can be terminated without assigning any reason is contrary to the provision of Section 25-F of the ID Act. Clause 4.1 seems to have been mentioned by the management in the appointment letter / Exhibit 'W19' / Exhibit 'M1' to avoid the liability arising under Section 25-F of the ID Act. Provision of Section 25-F of the ID Act shall prevail over Clause 4.1 of the appointment letter. Moreover, it is not the case of the management that workman has been paid retrenchment compensation. It is also not case of the management that before terminating the services of the workman, he was served any charge sheet or domestic inquiry was held against him.

20. As per the judgment of Hon'ble Supreme Court of India referred by Learned Representative for the workman reported in **1988(4) SLR 388** titled as **Narotam Chopra Versus Presiding Officer, Labour Courts & Another**, if the services of an employee are terminated in violation of Section 25-F of the ID Act, 1947, the order of termination is rendered ab-initio void and the employee would be entitled to reinstatement with continuity of service along with full back wages and other allowances. In the judgment of Hon'ble High Court of Punjab & Haryana referred by Learned Representative for the workman reported in **2008(6) SLR 360 (DB)** titled as **M/s New Midh Bhabra Transport Company (P) Ltd. Versus Presiding Officer, Labour Court, Gurdaspur & Another**, in para 4 it is held as below :-

"4. After hearing counsel for the parties, we are of the opinion that the services of respondent No.2-workman on 2.9.1998 were terminated without any charge sheet or any inquiry. In view of the said fact, the Award of the Labour Court dated 6.6.2006 does not suffer from any patent illegality and material irregularity when the Labour Court ordered reinstatement of respondent No.2-workman with continuity of service and also to grant 50% of the back wages."

The aforesaid judgments are applicable to the facts of the present case to an extent. Consequently, termination of service in violation of Section 25-F of the ID Act is illegal and hereby set aside.

21. Learned Representative for the management argued that the workman is not entitled to back wages because the workman has neither pleaded nor proved into evidence that he is not gainfully employed during idleness period. Moreover, when put to cross-examination AW1 Tarun Saini / workman stated that at present he is working as a part time Driver. On the other hand, it is argued that by Learned Representative for the workman that the workman is doing part time job to earn his livelihood and to run his family but the income is inadequate from the alternative part time employment. As per the law laid down by the Hon'ble Supreme Court of India in *Kendriya Vidyalaya Sangathan & Another Versus S. C. Sharma* reported in 2005 (1) SCT 569, it has been held that when the question of determining the entitlement of a person to back wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim. In view of the aforesaid judgment of Hon'ble Supreme Court, initial burden is upon the employee i.e. workman to plead and prove that he is not gainfully employed after his services were terminated by the employer. In the present case, the workman has not pleaded that he is not gainfully employed, though admitted in his cross-examination that he is a working as a part time Driver. The part time job has no semblance of permanency and therefore it cannot be said that the workman was getting adequate compensation from alternative part time job of Driver. There is no evidence that the workman is getting wages equal to the wages he was drawing prior to termination of his services. Under the circumstances, the workman is held entitled to 25% back wages.

22. In the light of discussion made above, the workman is held entitled for reinstatement with continuity of service and 25% back wages.

23. Accordingly, this issue is decided in favour of the workman and against the management.

Relief :

24. In the view of foregoing finding on the issue above, this industrial dispute is allowed. The workman is entitled for reinstatement with continuity of service and 25% back wages. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till its actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.),

(JAGDEEP KAUR VIRK)
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

Dated : 17.10.2023.

Secretary Labour,
Chandigarh Administration.

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Correction Slip

The 11th January, 2024

No. 87 Rules/II.D.4.—In terms of Rule 7 of Chapter 9 Part B of the Rules & Orders of Punjab and Haryana High Court, Volume-V, the following amendments carried out in the first schedule of the Code of Civil Procedure (after publication in the government gazettes of Punjab, Haryana and U.T. Chandigarh), are incorporated in Chapter 21 of the High Court Rules & Orders, Volume-I in the following manner :-

1. *Punjab and Haryana High Court Notification No. 150 Rules/XI.Y.16. dated 24.04.2009, published in Punjab Government Gazette on 15.05.2009, in Haryana Government Gazette on 01.05.2009 and in Chandigarh Administration Gazette on 01.06.2009.*

(a) After Rule 21 of Order V in Chapter 21 of the High Court Rules & Orders, Volume-I, newly inserted Rule 21-A in Order V is incorporated as under :

21-A. The High Court shall prepare a panel of courier service providers for the High Court and for Subordinate Courts in the States of Punjab, Haryana and Union Territory Chandigarh, which may be reviewed every year.

Explanation.-While giving approval to the panel of courier service providers by the High Court, the recommendations of District Judges may be kept in view:

Provided that where it has been found that a courier service provider has given a false report, information shall be sent to the High Court in this regard by the Court, through the District Judge. Upon receiving three such complaints, the courier service provider shall, after an opportunity of being heard, be placed on the blacklist, if his explanation has been unsatisfactory. He shall remain on the blacklist for a period of three years.

(b) After Rule 21-A of Order V in Chapter 21 of the High Court Rules & Orders, Volume-I, new inserted proviso below Rule 15(4) in Order VI is incorporated as under :

Provided further that on amendment of pleadings, afresh affidavit shall have to be filed in consonance with the amended pleadings.

(c) After Rule 2 of Order XVIII in Chapter 21 of the High Court Rules & Orders, Volume-I, newly inserted sub-rule (9) of Rule 4, Order XVIII is incorporated as under :

(9) The procedure for preparation of panel of Commissioners :-

APPOINTMENT OF COMMISSIONER

1. Qualifications:

The following persons shall be treated as qualified and eligible for being empanelled as Commissioners under Order 18 Rule 4(2) CPC :-

- (i) Retired Judges of the Supreme Court of India;
- (ii) Retired Judges of the High Courts;
- (iii) Retired District and Sessions Judges;
- (iv) Retired Additional District and Sessions Judges;
- (v) Retired Civil Judges;

- (vi) Legal Practitioners with 10 years of standing at the Bar having been so empanelled by the High Court.

2. Mode of Empanelment of an Advocate :

- I. The District Judge may *suo motu* or on an application by an Advocate eligible to be empanelled under Rule (1) supra, desirous of being brought on the panel of Commissioners for recording evidence in terms of Order 18 Rule 4(2) of the Code of Civil Procedure, 1908, would make his recommendations to the High Court in respect of the suitability of the recommendee as a Commissioner.
- II. The High Court after considering the recommendation and the material sent by the District Judge or otherwise available before it, approve the recommendations, as found proper, for empanelment as Commissioner(s).

3. Mode of empanelment other than an Advocate :

The District Judge may recommend the names of the former Judicial Officers, after seeking their consent, to be brought on the panel of the Commissioners maintained for recording evidence in terms of Order 18 Rule 4(2) of the Code of Civil Procedure, 1908. The High Court after considering the recommendations and the material sent by the District Judge would approve the recommendations, as found proper, for the empanelment as Commissioner(s).

4. Disqualifications :

The following shall be disqualification for being empanelled as Commissioner Under Order 18 Rule 4(2) CPC :-

- (i) any person who has been adjudged insolvent;
- (ii) any person against whom, criminal charges have been framed and are pending ; or
- (iii) any person who has been convicted by a Criminal Court for any offence involving moral turpitude ;
- (iv) any person against whom disciplinary proceedings have been initiated by the competent authority or who has been punished in such proceedings;
- (v) such other categories of persons as may be notified by the High Court.

5. Removal or Deletion from the Panel :

A person whose name is placed in the panel referred to above, may be removed or his name be deleted from the said panel, by the court which empanelled him, if :-

- (i) he resigns or withdraws his name from the panel for any reason ; or
- (ii) he is declared insolvent or is declared of unsound mind ; or
- (iii) he is a person against whom criminal charges are framed by a criminal court and are pending ; or
- (iv) he is a person, who has been convicted by a criminal court for any offence involving moral turpitude ; or
- (v) he is person against whom disciplinary proceedings on charges relating to moral turpitude have been initiated by appropriate disciplinary authority, which are pending or have resulted in a punishment ; or

- (vi) he exhibits or displays conduct, during functioning as Commissioner, which is unbecoming of a Commissioner ; or
- (vii) the Court which empanelled, upon receipt of information, if it is satisfied, after conducting such inquiry as it deems fit, is of the view, that it is not possible or desirable to continue the name of that person in the panel.

Provided that, before moving or deleting his name, under clause (vi) and (vii), the court shall hear the Commissioner whose name is proposed to be removed or deleted from the panel and shall pass a reasoned order.

6. Procedure for recording evidence by the Commissioner :

- (i) The Court shall while appointing the Commissioner issue directions regarding the place where Commissioner shall hold the proceedings. The Court shall also indicate the timings for the proceedings before the Commissioner. The place and timings may be determined as per the convenience of the parties and the Commissioner.
- (ii) The Court shall summon witnesses on applications filed by the plaintiff or the defendant and it shall be mentioned in the summons that evidence shall be recorded before the Commissioner appointed by the Court. The witness so summoned shall appear before the Local Commissioner for evidence. Thereafter, on appearance, the Local Commissioner shall proceed to record evidence of the witnesses who are present.

However where the witnesses failed to appear before the Local Commissioner, the Commissioner shall close the evidence after recording that the witnesses are absent but the Court on showing sufficient cause can permit the witnesses to be re-examined either by the Local Commissioner or before the Court itself on such terms and conditions as it deems appropriate.

- (iii) The Court shall, while giving directions, also indicate the time period for completion of the proceedings by the Commissioner.
- (iv) The Court shall order whether the Commissioner has to be handed over the original record of the case or only the Photostat copies of pleadings, documents and evidence. All photocopies shall be supplied by the party for whose evidence the Commissioner has been appointed.
- (v) The fee of the Commissioner shall be fixed by the Court at the time of appointment of the Commissioner after consultation with the party. The fee shall be deposited in Court in advance by the party at whose instance the evidence is to be recorded, half fee that has been deposited shall be released to the Commissioner before he commences recording of evidence and the remaining half after the completion of the recording of evidence by the Commissioner.

2. *Punjab and Haryana High Court Notification No. 18 Rules/XI.Y.16. dated 12.04.2016, for Haryana and UT Chandigarh, published in Haryana Government Gazette on 12.04.2016 and in Chandigarh Administration Gazette on 02.05.2016.*

and

Punjab and Haryana High Court Notification No. 162 Rules/XI.Y.16 dated 26.10.2018 for Punjab published in Punjab Government Gazette on 23.02.2023 :-

After sub-rule (9) of Rule 4 in Order XVIII in Chapter 21 of the High Court Rules & Orders, Volume-I, substituted Clause (vi) of sub-rule (9)(1) of Rule 4, Order XVIII is incorporated as under :-

"1(vi) Legal practitioners with 5 years of standing at the Bar (having adequate experience of examining the witnesses) having been so empanelled by the High Court"

3. *Punjab and Haryana High Court Notification No. 100 Rules/XI.Y.16 dated 01.06.2019 for Punjab and Haryana published in Punjab Government Gazette on 06.06.2019 and in Haryana Gazette on 27.02.2023.*
and
Punjab and Haryana High Court Notification No. 63 Rules/XI.Y.16 dated 19.04.2023 for Union Territory, Chandigarh published in Chandigarh Administration Gazette on 20.04.2023.

After Order XXI, Rule 32 in Chapter 21 of the High Court Rules & Orders, Volume-I, newly inserted sub-rule (4) of Rule 35 in Order XXI is incorporated as under :

" Where at the time of delivery of possession of immovable property, it is found that there are movable(s) lying in that property to which the decree holder has no claim and the judgment-debtor is absent, or if present, does not immediately remove the same, the officer entrusted with the warrant for delivery of possession shall make an inventory of the articles so found, with their probable value, in the presence of respectable persons on the spot, and have the same attested by them. The movable(s) shall be either handed over to some respectable person on sapurdari or shall be given in the custody of the decree holder after taking a bond from him for the safe custody of those articles, pending orders of the Court for disposal of the same.

The officer shall then make a report accompanied by such inventory, to the Court.

The Court shall, thereupon, issue a notice to the judgment-debtor/his counsel requiring him to take delivery of the said movable within fifteen days from the date of notice. It shall be specified in the notice that in default of the judgment debtor/his counsel responding to the notice, the articles shall be sold in public auction at the risk and cost of judgment debtor and the proceeds applied for meeting all legitimate expenses of custody and sale. The balance, if any, shall be deposited in Court and refunded to the Judgment-debtor:

Provided that if movable articles referred to above are perishable, the officer shall sell them in public auction immediately, and bring the proceeds into Court. The notice to the Judgment-debtor shall in such a case call upon him to receive the amount from Court within three months."

4. *Punjab and Haryana High Court Notification No. 189 Rules/XI.Y.16. dated 20.11.2023, published in Punjab Government Gazette on 23.11.2023, in Haryana Government Gazette on 24.11.2023 and in Chandigarh Administration Gazette on 21.11.2023.*

- I. Sub-rule (1) of Rule 1, Order XIII of Code of Civil Procedure, substituted vide Notification No. GSR 39C.A.5/1908/S.12257, dated 17.03.1975 at Serial Number 29 as contained in Chapter 21 of the High Court Rules & Orders, Volume-I is '**omitted**'.

- II. **After Order XIII, Rule 1 in Chapter 21 of the High Court Rules & Orders, Volume-I, newly inserted sub-rule (4) of Rule 1 in Order XIII is incorporated as under :**

"1. Original documents to be produced at or before the settlement of issues.-

(4) The documents as mentioned in sub-rule (1) and all other documents which the Court orders to be produced, shall be produced in the following Form No. 5 of Appendix H (Miscellaneous) of the Appendices to the First Schedule of CPC by substituting the existing Form No. 5 :-

No. 5

**List of documents produced by Plaintiff/Defendant under
Order XIII, Rule 1, Civil Procedure Code
(Order XIII, sub-rule(4) of Rule 1)**

IN THE COURT OF _____ AT _____ DISTRICT

SUIT NO. _____ OF 20__

_____ **Plaintiff**

Versus

_____ **Defendant**

**List of documents produced with the plaint (or at first hearing) on
behalf of Plaintiff or defendant**

This List was filed by _____ this day of 20__

1	2	3	4		5
Serial No.	Description and date, if any, of the document	What the document is intended to prove	What became of the document		Remarks
			If brought on the record, Exhibit mark put on the document	If rejected date of return to the party and signature of party, or pleader to whom the document was returned.	

**Signature of party or pleader
Producing the list.**

III. After Order XVIII, Rule 2 in Chapter 21 of the High Court Rules & Orders, Volume-I, newly inserted proviso to Rule 4(1), Order XVIII is incorporated as under :

"Provided further that the Court in its discretion may record the examination-in-chief of a witness orally or by way of affidavit."

BY ORDER OF HON'BLE THE CHIEF JUSTICE AND JUDGES

(Sd.) . . .,

(ARUN KUMAR AGGARWAL),
Registrar (Rules),
for Registrar General.

"No legal responsibility is accepted for the contents of publication of advertisements/public notices in this part of the Chandigarh Administration Gazette. Persons notifying the advertisements/public notices will remain solely responsible for the legal consequences and also for any other misrepresentation etc."